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Kevin J. Dowling

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EXAMINER

VU, DAVID HUNG

ART UNIT

PAPER NUMBER

2828

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/805,368

Applicant(s)

DOWLING ET AL.

Examiner

David Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 October 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-92 is/are pending in the application.
- 4a) Of the above claim(s) 26-42, 46-49, 52-71, 75 and 82-92 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-11, 13, 16-23, 25, 43-45, 50, 51, 72, 73 and 76-81 is/are rejected.
- 7) ☒ Claim(s) 12, 14, 15, 24 and 74 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/10/03, 8/14/02</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> .           |

Continuation of Attachment(s) 6). Other: IDSmal date:

10/15/02,03/06/03,04/11/03,04/15/03,11/10/03,,12/04/03,01/26/04,02/04/04,02/23/04,08/02/04,03/19/03,10/12/04

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of claims 9 and 76 and the claims dependent thereon in the reply filed on 10/22/2002 is acknowledged.
2. Claims 26-42, 46-49, 52-71, 75, and 82-92 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/22/2002.
3. Claims 9-25, 43-45, 50-51, 72-74, and 76-81 are being examined on the merit. Claims 43 and 50 must be rewritten so as to be dependent on claim 10 only since claim 27 belongs to an unelected specie. Claim 72 must be rewritten in order to show the claim depends on claims 9 and 51 only.

### *Drawings*

4. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because even though the drawings are formal, many figures are not legible, for example, 8-9, 13, 27, 26 etc. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

***Specification***

5. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Objections***

6. Claims 17, 24-25, 45, 50, 73-74, 76, and 80 are objected to because of the following informalities:

Claim 17, line 2, "a housing" should properly be ---a first housing---.

Claims 24-25, should "memory" properly be ---a memory---?

Claim 45, "information regarding" appears twice.

Claim 50, "...of claim of..." should be corrected.

Claim 73, "a electromagnetic" should be ---an electromagnetic---.

Claim 74, "...is communicates..." is grammatically incorrect.

Claim 76, last line "semicolon" should be period ---.---; should "the power signal input" be just ---signal input---?

Claim 80, "claim of 76" should be ---claim 76---.

7. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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9. Claims 19, 77-79, and 81 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 19, "the at least two controllers" renders the claim unclear since there is only one controller recited earlier.

Claims 77-78, "the external input connection" renders the claim indefinite as lacking the strict antecedent basis.

Claim 81, "the platform" renders the claim indefinite as lacking the strict antecedent basis. Claim 81 is confusing in that it is unclear how the platform can be a combination of all recited elements.

Claim 79 is rejected by virtue of its dependency on claim 78.

### ***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 9-11, 16-19, 72, 76, and 80-81 are rejected under 35 U.S.C. 102(e) as being anticipated by Chliwnyj et al., U.S. Pat No 5,924,784.

Chliwnyj et al. disclose the claimed invention including LEDs 7a-7e

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producing at least two different spectra; a processor 1 having a memory; a controller 19 wherein the controller controls power delivered to at least one of the two or more LEDs; the controller further comprising a signal input wherein the signal input is associated with the processor and being responsive to signals communicated to the signal input; and a housing with light-transmissive material 30, 61, 38, 55, 53 wherein the LEDs are arranged to operatively associate with the material, figures 2-7 and 9, columns 4-7, 11-12, 13-14.

Regarding claim 10, column 4, lines 4+ disclose a "user interface" inherently "associated" with the processor.

Regarding claim 16, figure 3 shows housing for enclosing the claimed elements.

Regarding claim 17, figure 4 shows first housing 27 and second housing 30.

Regarding claim 18, housing 30 is formed of transparent material.

Regarding claim 19, insofar as best understood, controller 19 can be a combination of more than one pulse width modulator.

Regarding claims 72 and 80, figure 2 shows a microprocessor 1.

Regarding claim 81, figure 4 shows platform 27.

Note that the claims are replete with the term "associated" which is not given much patentable weight since all elements in a device must be somehow "associated " with each other.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 13, 20-23, 25, 43-45, 50-51, 73, and 77-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chliwnyj et al in view of Post et al, U.S. Pat No 5,187,655.

Chliwnyj et al as discussed from the above, essentially disclose the claimed invention but fail to explicitly disclose the user interface supplies a logic high or low signal. Post et al disclose user interface, i.e., encoder 17,51 (figures 1-2, column 6, lines 16-26, column 8, lines 15-18). An obvious modification would have provided the Chliwnyj et al reference with the encoder as taught by Post et al. It would have been obvious to one having ordinary skill in the art at the time of applicant's claimed invention was made to have employed the encoder as taught by Post et al as it would have initiated the processor into changing a program and program parameter upon receipt of the encoder signal.

Regarding claims 21-22, figure 1 shows button 9.

Regarding claims 23, decoder circuit 53 converts analog signal to digital signal and provides the digital signal to the processor.

Regarding claims 43-45, Post et al disclose LCD 55 associated with a processor as claimed.



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Regarding claims 73,77, figure 2 of the Post et al reference shows receiver 47 for receiving at least one of an electromagnetic transmission, radio frequency transmission, microwave transmission, wire transmission, and cable transmission.

Regarding claims 50-51 and 78-79, figures 1-2 of the Post et al reference shows "user interface", i.e., push-button 9, encoders 17,51 for communicating with the processor at least through wire transmission.

#### ***Allowable Subject Matter***

14. Claims 12,14-15, 24 and 74 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Vu whose telephone number is (571) 272-1831. The examiner can normally be reached on M-F 8am-430pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Vu  
Primary Examiner  
Art Unit 2828

dv